IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5524 OF 2004

Framroze Navroji Darukhanawala. ...Petitioner.
Vs.
Union of India & Ors. ...Respondents.
....
Mr. D. J. Khambata with Mr. Ayaz Bilawala & Co. for the Petitioner.
Mr. D. A. Dubey for Respondent No.1.
.....
CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

April 3, 2006.

P.C. :

Rule. Mr.Debey for Respondent No.1 waives service. By consent of the Learned Counsel taken up for hearing and final disposal.

2. The Petitioner has prayed for appropriate writ, order or direction, directing the Respondents to cancel and/or withdraw the impugned notice dated 7th June 2002, Exhibit 'P' and other consequential reliefs. It is stated that the earlier notice dated 13th March 1972 was challenged by filing Special Civil Application No.2168 of 1972 in this Court wherein also the Petitioner challenged the action of the Government of India seeking to

resume the land in Survey No.753 (Bungalow No.11, Right Flank Wonwori Line) Poona Cantonment on the ground that the said land belonged to the President of India. It appears that the Union of India issued a fresh notice on the ground that the said land belongs to the President of India and that the Petitioner held the same on “Old Grant Terms” under which the Government was entitled to resume the same. The said petition was disposed of on 8th February 1979 by a Division Bench of this Court following the judgment rendered by this Court in Special Civil Application No.1286 of 1972 decided on 5th February 1979 which negatived the contentions raised by the Respondents and accepting the contention of the Petitioner held that resumption by the Government of India of the Petitioner's land was without any authority of law and the impugned notice was, therefore, invalid. It appears that the Union of India filed a batch of appeals before the Supreme Court. The Supreme Court on 4th August 1998 disposed of Civil Appeal Nos.609-11 of 1980 with Civil Appeal Nos.613-18, 621 of 1980 and other allied cases and passed the following order:

> “Learned Solicitor general states that the Union of India would seek dispossession of the respondent-occupants

> from the properties involved in accordance with law land if need be, through a Civil Court by filing suits. In case such steps are taken any observations made by the High Court which would tend to defeat the remedies sought would not stand in its way. On such stance of the Union of India, Civil Appeals as also the special leave petitions stand disposed of accordingly."

Thereafter, the present notice dated 7th June 2002 was issued by Respondent No.2 which is under challenge in this petition.

3. Having heard the Learned Counsel at length and having perused the order dated 7th June 2002, we are of the opinion that the said order is required to be set aside on the ground that it violates the principles of natural justice. The Learned Counsel for the Petitioner submitted that even though the said order has been described as a notice to deliver peaceful possession of Bungalow No.11 of Right Flank Wonwori Line, but the same is in the form of order. Hence, the same has been issued without issuing any show cause notice and/or without hearing the Petitioner. The Learned Counsel appearing on behalf of Union of India has not

disputed the above said submission. Not only that but Union of India has chosen not to file any affidavit controverting this fact. On 20th September 2004, this Court adjourned the case to enable the Union of India to file reply. The Union of India having failed to file the reply, we see no reason not to accept the statement made by the Learned Counsel appearing on behalf of the Petitioner. We accordingly allow this petition by quashing and setting aside the order dated 7th June 2002 Exhibit 'P'. We direct the Union of India not to dispossess the Respondents from the property without following due process of law. It will be open for it to approach the Civil Court by filing Suit and/or by raising counter claim in the pending suits being Special Civil Suit Nos.1076 of 2001 and 1843 of 2001 pending before the Learned Civil Judge, Senior Division, Pune.

4. Rule made absolute. No order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.